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IN THE

Supreme Court of the United States

October Term, 1967
No. 729

SAMUEL RATNER,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Reply to Respondent's Brief in Opposition to Petition for Writ of Certiorari.

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Petitioner respectfully files this reply to Respondent's brief in opposition to the Petition for Writ of Certiorari pursuant to Rule 24(4) of the revised rules of the Supreme Court of the United States.

Petitioner in this reply will address himself only to the arguments first raised by Respondent beginning at Page 5 of his brief, under II, concerning the "pandering" aspects of the case. In so doing, petitioner states categorically that he in no way acquiesces to any of the arguments in other parts of the opposition of respondent, and states, in particular, that he in no way concedes the accuracy of respondent's statement of the evidence.[1]

[1]A glaring example of inaccuracy of the factual statement of the case appears on Page 2 of Respondent's brief in opposition, in which respondent states . . . "As explained by the defendant

(This footnote is continued on the next page)

I.

No Pandering Issue Is Presented in the Instant Litigation Because of the Recently Decided Case of People v. Noroff, 67 A.C. 814, Wherein the Supreme Court of the State of California Stated That California Law Does Not Include Any Issue of Pandering in an Obscenity Case Brought Under Section 311.2 of the California Penal Code.

The instant litigation derives from a California State prosecution brought under Penal Code §311.2, which declares that obscene material is proscribed. At no place in §311.2 does the California Legislature declare that "pandering" or any word substantially similar constitutes a crime under the law of the State of California.

In the recent case of *People v. Noroff*, 67 A.C. 814 (1967), (decided since the affirmance of the within case by the Appellate Department of the Superior Court of the County of Los Angeles), the Supreme Court of the State of California stated clearly that "pandering" is not part of the law of the State of California, and did so in the following clearly enunciated language:

> "We cannot accept the People's argument, advanced for the first time on appeal, that the trial court should have permitted the prosecution to go to the jury with evidence bearing upon the defendant's 'pandering' of the magazine in question. First, the indictment did not charge the defendants with pandering; second the State Legislature has created no such crime."

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himself . . ." leading one to believe that the defendant testified as to certain matters. The transcript of record will disclose that the defendant, at no time, took the stand and testified in the instant litigation.

Also, the Court amplified the statement made by the footnote number 3:

> "Earlier this year, the Attorney General advocated the amendment of the Penal Code to prohibit the offense of 'pandering'—'the business of purveying textual or graphic matter openly advertised to appeal to the erotic interest of . . . customers'. . . . To date, no such amendment has been enacted."

It will be seen therefrom that the instant litigation raises only the issue of obscenity vel non?

The Respondent argues in its footnote 2 on page 6 of its Brief in Opposition that *People v. Noroff, supra* in not controlling and that the United States Supreme Court could in spite of the holding of *People v. Noroff* declare that the "pandering" issue is involved in the instant litigation. The respondent's authority for such a statement is cited as the case of *Cooper v. California,* 386 U.S. 58, 61, 87 S. Ct. 788, 790 (1967). The case of *Cooper v. California* is simply inapposite. A reading of *Cooper v. California* and the related case of *Chapman v. California,* 87 S. Ct. 824, 386 U.S. 18, are clearly inappropriate because both cases dealt with the problem of the restriction by state law of federally created rights. The instant case involves the reverse. This case could not possibly involve the restriction of federally created rights by state law because the removal of the "pandering" aspect from the law of the State of California can only mitigate in favor of First

Amendment created rights to Free Speech, rather than against them.

Mishkin v. New York, 383 U.S. 502, 86 S. Ct. 958, 16 L. Ed. 2d 56 [1966];

Ginzburg v. United States, 383 U.S. 463, 86 S. Ct. 942, 16 L. Ed. 2d 31 [1966].

Respectfully submitted,

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